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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 461

WILLIAM GREENOUGH AND GEORGE HENRY WARREN, JR., TRUSTEES,

Appellants,

vs.

TAX ASSESSORS OF THE CITY OF NEWPORT AND EDWARD L. LEAHY, TAX ADMINISTRATOR OF THE STATE OF RHODE ISLAND

APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF NEWPORT, STATE OF RHODE ISLAND

STATEMENT OPPOSING JURISDICTION

JOHN C. BURKE,
City Solicitor.

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STATEMENT BY APPELLEES OF GROUNDS IN OPPOSITION TO APPELLATE JURISDICTION OF ABOVE COURT PURSUANT TO SUPREME COURT RULE 12.

The appellees state the following matters and grounds against the jurisdiction of this Court as asserted by the appellants herein on the seventh day of August, 1946, as required by Rule 12 of the Supreme Court.

I

The statute relied on by appellants herein to sustain the appellate jurisdiction of this Court i. e. Section 344 of Title 28 of the United States Code, is not applicable to this case for the reasons that the decision of the Supreme Court of the State of Rhode Island on the Federal question was not necessary to the determination of this action because non-Federal questions were presented to said court which were

not decided and if passed on could have terminated the case.

In support of these contentions the appellees cite the following cases:

Zucht v. *King*, 260 U. S. 174;
Sennette v. *St. Mary's Parish Police Jury*, 129 La. 728, 56 S. 653;
Bell Tel. Co. v. *Okl.*, 303 U. S. 206, 82 L. Ed. 751;
Alabama State F. of L., etc. v. *McAdory* (Alabama 1945), 65 S. Ct. 1384, 89 L. Ed. —;
Adams v. *Russell*, 229 U. S. 353, 57 L. Ed. 1224;

and numerous other cases to the same effect.

II

Appellants allege in their petition to certify this case to this Honorable Court that all of the property of the trust was located in the City of New York and that there was no property of the trust estate in the State of Rhode Island, and that the tax which is the subject of this controversy was paid by them under protest. Appellees contend, therefore, that as there was no demand or levy, or attempt to levy, and no compulsion, coercion or duress, the payment of the tax must be considered, under the circumstances of this case, as having been a voluntary payment, and does not constitute a taking of property without due process of law within the meaning of the Constitution of the United States, or a violation of the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

III

Appellants were not required to pay the tax; they had ample remedy at law or in equity to protect them from

paying a tax which they contend was illegal, unconstitutional or void, and as the payment was not exacted it was not a taking of property without due process of law within the meaning of the Constitution of the United States, and the decision of the question of whether or not the statute of the State of Rhode Island (Chapter 30, Section 9, Subsection Fifth, G. L. 1938) was unconstitutional or in conflict with Article 14 of the Amendments to the Constitution of the United States was not necessary to the determination of the case.

IV

It appears affirmatively that appellees raised two questions before the Supreme Court of the State of Rhode Island: (1) That the petition could not be properly brought in its present form under the provisions of Section 14, Ch. 31, G. L. 1938 (Page 111, G. L. Rhode Island 1938). (2) That the payment of the tax under the circumstances of this case was a voluntary payment which could not be recovered back. The Supreme Court of the State of Rhode Island declined to pass on these questions, stating that because of the ultimate disposition of the case it was not necessary to pass upon said questions and thereupon passed upon and decided the case on the Federal question of the constitutionality of the statute. The court could have decided either one of the above non-Federal questions in favor of the appellees which would have been decisive of the case and the constitutional question would not then have arisen.

V

That the amount of the tax is such a trifling sum it does not represent a substantial controversy and there is no substantial Federal question presented.

VI

That the statement of the appellants does not cite the cases believed to sustain jurisdiction as provided in Rule 12, Paragraph 1.

VII

Appellees move that said appeal be dismissed.

Dated August 19, 1946.

Respectfully submitted,

(S) JOHN C. BURKE,
City Solicitor,
City of Newport, R. I.,
Counsel for Appellees.